THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22120 OF 2006

DATED 3rd NOVEMBER, 2006

BETWEEN

B.R.Granites, rep.by its Prop.Bogineni Ramanaiah

… Petitioner

and

The Government of Andhra Pradesh, rep.by its Secretary, Industries & Commerce Department, Secretariat, Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22120 OF 2006

ORDER:

The petitioner is a proprietary concern. It was granted mining lease by the second respondent on 21.11.2003 for black granite over an extent of 3.846 hectares in survey No.58/P of Budavada village, Chimakurthy Mandal of Prakasam District for a period of twenty years. After completing formalities, the petitioner was issued work order for a period from 09.01.2004 to 08.01.2024. Be that as it is, on an allegation that the petitioner concern did not pay the advance rent as required under Rule 12(5)(g)(iii) of A.P.Minor Mineral Concession Rules, 1966 (the Rules, for brevity), and Clause 10(3) of the quarry lease executed by the petitioner, a show cause notice of determination of lease was issued to the petitioner, directing the petitioner to rectify the breach of conditions within seven days. The petitioner did not send a reply. Therefore, by proceedings, dated 10.06.2005, the second respondent determined the lease duly forfeiting security deposit to the Government under Rule 12(5)(h)(xiii) of the Rules. Aggrieved by the same, he preferred revision before the first respondent. At that stage, the third respondent herein, impleaded in the revision as he had applied for quarry lease over the same area. It appears on an application allegedly made by the petitioner, the revision petition was closed as withdrawn. The petitioner then approached second respondent raising objection for the same asserting that he never filed any such application to withdraw the revision petition. Be that as it is, the Government having noticed that the application to withdraw was not filed by the petitioner again heard the matter on 27.05.2006. By impugned Memo, dated 04.10.2006, the Government dismissed the revision petition.

Learned counsel for the petitioner submits that the petitioner had to face initial teething problems in removing the granite and therefore, could not deposit the advance rent. After receiving the show cause notice from the second respondent, the petitioner approached the Assistant Director of Mines and Geology when he came to know about the determination. Thereafter, the petitioner deposited the entire advance dead rent for 2005-2006 along with interest and therefore, this

mitigates in favour of the petitioner. Secondly, she submits that in number of cases, the Government has shown indulgence and condoned the lapse on the part of the mining lessees in payment of advance dead rent and same treatment is denied to the petitioner. Though initially along with the writ petition, no documents in support thereof are filed, learned counsel for the petitioner with leave of this Court has circulated two orders of the Government of Andhra Pradesh and one order of the Director of Mines and Geology to substantiate the contention. **Per contra**, learned Government Pleader for Industries opposed the writ petition. He contends that the second respondent has given adequate time to the petitioner to comply with the conditions of lease as well as Rules but the petitioner did not pay the dead rent and therefore, the orders passed by respondents 1 and 2 do not warrant any interference.

There is no denial that the petitioner has failed to comply with Rule 12(5)(g)(iii) of the Rules and clause 7 of the lease deed in Form K. Indeed, in paragraph 4 of the writ affidavit, the petitioner admits this. The averment reads as under.

> I submit after execution of lease deed I started quarry operations and removed over burdened soil and gravel, the granite which is removed then was having cracks and joints and the same was thrown as waste. I could not remove any marketable granite for transportation. I had invested Rs.15,00,000/- for the querry and underwent loss due to the reason I could not deposit the dead rent in time on receipt of the show cause notice I approached the time and office of the Assistant Director of Mines and Geology informed that to grant some deposit dead rent Director has passed order determining the lease. On receipt of order of Director, I preferred revision and also have deposited Rs.2,87,300/- for the year 2005-2006 and also an interest of Rs.85,000/- on 14.02.2006.

The next aspect therefore is whether there are any mitigating circumstances warranting a lenient view by second respondent and then by first respondent. This Court is afraid that this is a case where no indulgence can be shown to the petitioner. As seen from the record produced before this Court, the second respondent issued show cause notice on 24.03.2005 advising the petitioner to submit compliance with the requirement of payment of advance dead rent for 2005-2006 as per Rule 12(5)(g)(iii) of the Rules within seven days from the date of receipt of show cause notice. The show cause notice was received by the petitioner but he did not take any steps for payment of dead rent. The allegation that he approached the Assistant Director of Mines and Geology for extension of time is an allegation made in despair. The

same cannot be accepted for the reason that no such material is placed before this Court to show that the petitioner approached the Assistant Director concerned for extension of time. Further, even if the petitioner has really approached Assistant Director, the said Officer is not competent to grant extension and the petitioner admittedly did not approach the second respondent.

The second respondent after waiting for almost three months, passed orders under Rule 12(5)(h)(xiii) of the Rules determining mining lease for non-compliance for Rule 12(5)(g)(iii) of the Rules. The order was received by the petitioner. Aggrieved by the same, the petitioner filed revision petition after lapse of three months on 20.09.2005 before the first respondent. Even during the interregnum of three months before filing revision, the petitioner did not pay the amount. As seen from the uncertified Xerox copies of the challans, the petitioner allegedly paid a sum of Rs.2,87,300/- vide Challan No.2118, dated 14.02.2006 and another sum of Rs.85,000/- vide challan No.2119, dated 14.02.2006 at District Treasury, Ongole. This would certainly show that when the petitioner was required to pay the advance dead rent before the beginning of the financial year 2005-2006. He did not even avail the opportunity given by the second respondent to pay the sum within seven days from the issue of show cause notice, dated 24.03.2005. The petitioner also did not deposit the amount when he filed a revision petition on 20.09.2005. Therefore, the first respondent observed that the petitioner paid the amount after lapse of one year for which reason they were not inclined to interfere with the proceedings of the second respondent. On this point, therefore, the petitioner cannot succeed in an application for judicial review when the revisional authority considered the factual background and came to correct conclusion. Merely because in a given circumstance, such lapse could have been condoned by the revisional authority by itself is no ground to allow a petition for judicial review.

The submission that the petitioner was discriminated is not sound. This Court has perused (i) Proceedings No.28295/R6-2/05, dated 21.10.2005; and (ii) Proceedings in M.No.1/199/M.III(1)/05, dated Nil issued by the Government of Andhra Pradesh; and
(iii) Proceedings in M.No.995/M.II(1)/2006-3, dated 10.03.2006 issued by the Director of Mines and Geology. In these cases, the mining lessees either paid the amount and produced challans along with revision petitions or the mining lessees appeared before the Director of Mines and sought time. These are cases, which certainly can be distinguished. The petitioner cannot rely on these when he did not even pay the amount even though sufficient time was granted to him

by Director of Mines and Geology.

The writ petition is devoid of any merit and is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

.11.2006.

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